

Prepared by and return to:
NEIL HARKAVY, ESQ.
Harkavy Shainberg Kaplan & Dunstan PLC
6060 Poplar Avenue, Suite 140
Memphis, TN 38119
90524-5185

7/10/12 3:54:33
DK W BK 684 PG 705
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

DECLARATION OF EASEMENTS AND CONDITIONS

THIS DECLARATION OF EASEMENTS AND CONDITIONS (the "Declaration") is made and declared as of the 10 day of July 2012, by MEMPHIS-CHURCH ROAD, LLC, a Mississippi limited liability company (the "Property Owner");

WITNESSETH:

A. Property Owner is the present owner of certain real property situated in Desoto County, Mississippi, known as Lots 1 and 2 of Fred's Subdivision as shown on plat of record in Deed Book 110, Page 46 in the Office of the Chancery Court Clerk of DeSoto County, Mississippi, to which plat reference is hereby made for a more particular description of such property (the "Property"). Section 1 Township 2S Range 8W

B. The Property has been subdivided into two lots (Lot 1 and Lot 2), each one of which is separately referred to as a "Lot" and which are sometimes collectively referred to herein as the "Lots."

C. Any person (including Property Owner) now or hereafter owning a Lot is hereinafter referred to as a "Lot Owner."

D. Property Owner in connection with such Property desires to create and establish certain easements upon the Lots and to impose certain terms and conditions as hereinafter set forth with respect to the Lots in order to facilitate the development, use, and operation of the Lots and for the mutual and reciprocal benefit and complement of the Lots and the present and future owners thereof.

NOW, THEREFORE, Property Owner hereby declares, covenants, grants, and imposes upon the Property the following perpetual, nonexclusive easements and conditions, which shall constitute covenants

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running with the land and which shall be binding upon the Property Owner and all Lot Owners and their respective heirs, personal representatives, successors and assigns.

1. Easements. Property Owner hereby grants, imposes, and declares perpetual, non-exclusive easements over portions of the Property, which shall benefit and burden the Lots for the benefit of each Lot Owner and its invitees, tenants, contractors, employees, and guests, as follows:

- (a) Access Easement over, across, and upon those portions of the Property labeled as "Common Entranceway" on Exhibit A attached hereto and made a part thereof for normal, reasonable, and unobstructed vehicular and pedestrian use and passage, but not parking.
- (b) (i) Access Easement over, across, and upon all portions of Lots which are not improved with a building or other aboveground improvements or equipment and which are improved with parking areas, driveways, and sidewalks for pedestrian and vehicular traffic; provided, however, that nothing herein contained is intended, or shall be construed, to create any easement or other right for the parking of vehicles of a Lot Owner or its tenants, employees, invitees or licensees on any other Lot belonging to another Lot Owner. Furthermore, no prescriptive easement, right or interest in the public shall be created by this Declaration. All areas of Lots which are burdened by the aforescribed easements (including, without limitation, the paved Common Entranceways, driveways, parking areas, and sidewalks located thereon) shall at all times be kept and maintained in good condition and repair (including replacements, as required) by the Lot Owner of the fee simple title to the land underlying such

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particular easement area.

(ii) Further, to the extent permitted by applicable land use laws, any Owner of a Lot may remove then existing buildings and other aboveground improvements and rebuild improvements on such Lot which may cover more area than existed before such removal; and a Lot Owner may also enlarge then existing buildings and/or construct other additional buildings on such Lot.

(iii) Service Truck Access Easement #1 over, across, and upon those portions of the Property labeled as "Service Truck Access #1" on Exhibit A attached hereto and made a part hereof for the purpose of providing access to the rear of the building on Lot 1 by service trucks. To the extent that any Lot Owner uses driveways, the Common Entranceway, or the Service Truck Access #1 or uses Service Truck Access Easement #2, as hereinafter provided for, within easement areas located on the adjacent undeveloped Lot, such Lot Owner using such easement areas and benefiting thereby shall bear the entire cost of maintaining and repairing same until the earlier of such time as the adjacent Lot is developed and the driveway located thereon is used by such adjoining Lot Owner or construction traffic related to the development of the formerly undeveloped Lot begins to use the same area.

(iv) Drainage easement by sheet flow or pipe from Lot 2 over Lot 1 to the detention basin nearest the north boundary line of said Lot 1 as such detention basis is shown on Exhibit A hereto, including the ability of the then owner of Lot 2 to extend said detention basin to or beyond the east side of the property line of Lot 1 onto Lot 2; and to modify the detention basin outlet structure, all

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limited only by what is permitted by the municipality.

(v) Conduit easement from Lot 2 to transformer on Lot 1, including the ability to receive electrical service from the transformer; as shown on Exhibit A hereto.

(vi) Easement over Lot 2 for Lot 1 to connect to a fire hydrant located on Lot 2 and an Easement over Lot 1 for Lot 2 to the fire hydrant water valve, all as shown on Exhibit A hereto. Either Property Owner shall have the right to relocate such hydrant during any construction with fire department approval considering the impact on both Lots.

2. Each Lot Owner shall maintain and pay for comprehensive general liability insurance naming all other Lot Owners as additional insureds on the policy or policies for a combined bodily injury and property damage limit of liability of not less than \$2,000,000.00 for each occurrence and shall upon request deliver to each of said Lot Owner a certificate evidencing the existence of such insurance.

3. Lot 1 is granted an access easement from the east side of the Common Entranceway Easement onto Lot 2 eastward up to and including the existing curbing as shown as the Extra Pavement Access Easement on Exhibit A until Lot 2 is developed, at which time said existing curbing shall be removed at the discretion of the Lot 2 owner and this particular easement shall self-extinguish.

4. Amendment of Declaration/Relocation of Portion of Common Entranceway.

(a) The Owner of Lot 2, incident to the development thereof, shall have the right to remove, reduce, alter, relocate or extinguish the Service Truck Access Easement #1 created hereby for the benefit of Lot 1 over that portion of Lot 2 crosshatched on said Exhibit A as Service Truck Access

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Easement #1, provided, however, that the Owner of Lot 2 shall replace such with a mutually agreeable Service Truck Access Easement Area #2 in order to always provide commercially reasonable access to the rear of the building on Lot 1 by service trucks in size up to a typical 18 wheeler, provided, however, such replacement must be consented to and approved by Fred's Stores of Tennessee, Inc. ("Fred's"), the tenant of the Owner of Lot 1, which approval shall be given to the Owner of Lot 2 within fourteen (14) days from the date of Fred's receives its written request for such approval from the Owner of Lot 2. If Fred's does not respond within 14 days, then Fred's shall be given a second 14-day written notice. In the event Fred's fails to respond to such second request within said fourteen (14) days, Fred's consent and approval shall be deemed to have been granted. All request to Fred's shall be sent to the addresses below. In the event the Owner of Lot 2 elects to remove, extinguish, reduce or relocate the Service Truck Access Easement #1, this Declaration shall be amended by such parties to accordingly reflect the new location of the Service Truck Access Easement #2. Upon the removal, reduction, termination or relocation of the Service Truck Access Easement #1, the Owner of Lot 2 may remove the pavement on that portion of the Service Truck Access Easement #1 affected.

- (b) This Declaration may be modified, amended or terminated upon the written agreement executed by all Lot Owners and recordation of said agreement in the

Office of the Chancery Court Clerk of DeSoto County, Mississippi.

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- (c) This Declaration shall be binding upon, and shall inure to the benefit of, Property Owner and each Lot Owner and their respective heirs, personal representatives, successors, assigns, tenants, agents, and invitees.

(iv) Enforcement, Waiver, and Binding Effect of Restrictions. The provisions herein contained shall bind and be for the benefit of, and be enforceable at law and in equity, by Property Owner, its successor and assigns, or by any Lot Owner. Failure by Property Owner, its successors and assigns, or any Lot Owner to enforce any of the conditions and covenants herein contained shall in no event be deemed a waiver of the right to do so thereafter and shall not subject Property Owner to any liability for failure to enforce. In the event litigation should be initiated to resolve any dispute, all costs of enforcement, including legal fees and costs of court, shall be borne by the non-prevailing party in any such litigation. This Declaration is being executed and delivered, and is intended to be performed, in the State of Mississippi, and the laws of such State shall govern the rights and duties of all parties in the validity, construction, enforcement, and interpretation hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS the due execution hereof.

MEMPHIS-CHURCH ROAD, LLC
a Mississippi limited liability company

By: Jack L Erb, Jr
Its: MEMBER

STATE OF MISSISSIPPI
COUNTY OF DESOTO

Before me, of the State and County mentioned, personally appeared Jack L. Erb, Jr. with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Member of MEMPHIS-CHURCH ROAD, LLC, a Mississippi limited liability company, and that as such, on behalf of the limited liability company, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the limited liability company as such Member of said company.

WITNESS my hand and Notarial Seal at office the day and year above written.



Neil Harkavy
Notary Public

My Commission Expires _____
CONSENT OF LOT 1 LESSEE

Fred's Stores of Tennessee, Inc. joins in this Declaration only for the purpose of consenting to the terms therein as same may affect its leasehold and shall not be obligated for any maintenance of the easements referenced herein, other than as expressly provided for in its lease agreement for Lot 1.

FRED'S STORES OF TENNESSEE, INC.

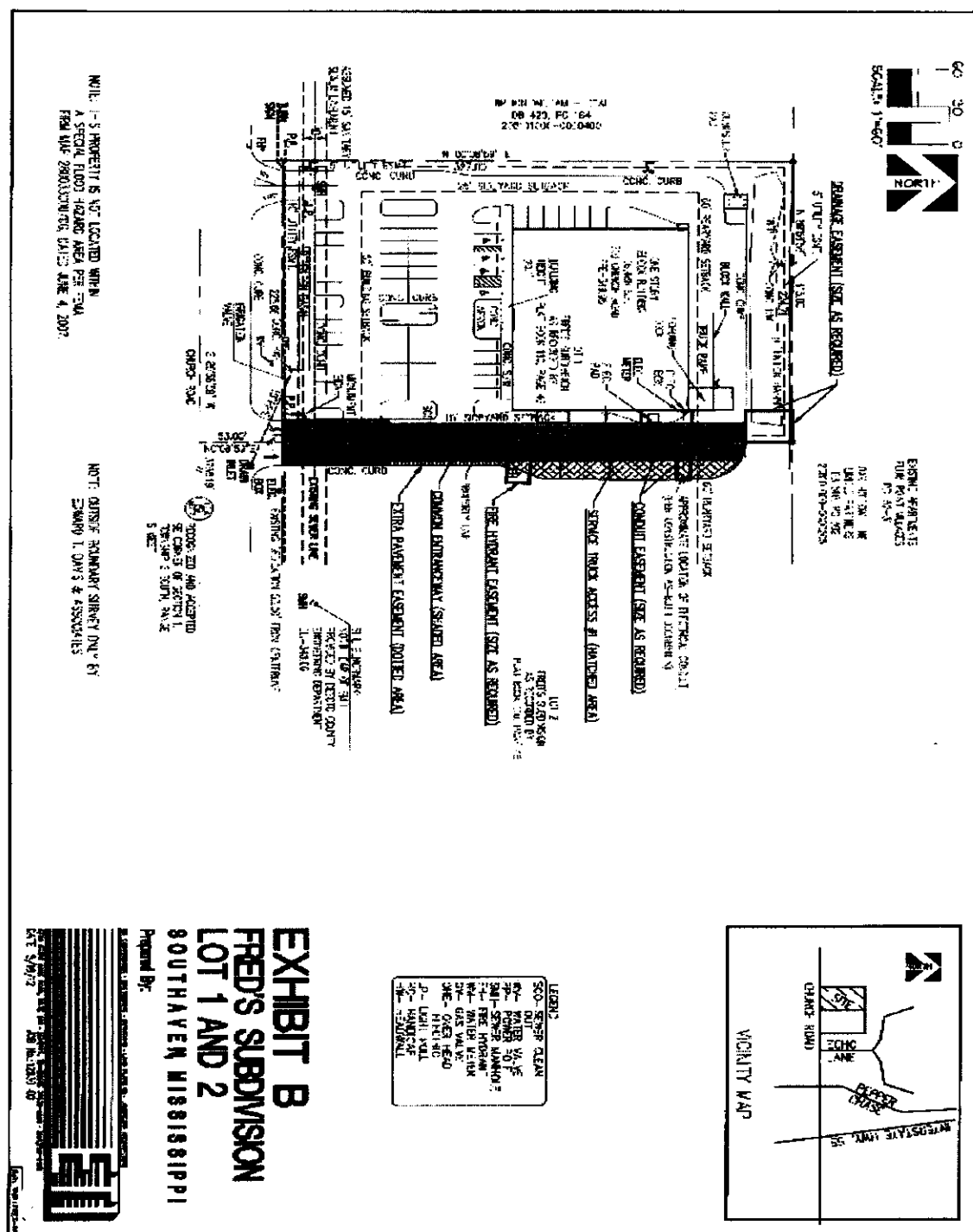
By: [Signature]

4300 New Getwell Road
Memphis, TN 38118
Attn: Real Estate AND Legal Dept.

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EXHIBIT A



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